

Study Meeting
Monday, March 3, 2014, 5:30 p.m.
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

Call to Order

Mayor Gene Winstead called the study meeting to order at 5:30 p.m.

Roll Call

Present: Mayor Winstead, Councilmembers C. Abrams, J. Baloga, T. Busse, A. Carlson, D. Lowman and J. Oleson.

**STUDY ITEM #1 –
Discuss
Nonconformity
Standards**

Glen Markegard, Planning Manager presented a brief overview on the issue of use nonconformities and some recommended approaches for dealing with them. His presentation was as follows:

- Competing Objectives for Nonconformities: *(Change over time while preserving property rights.)*
- State Law
- Bloomington Nonconformity Standards
- Types of Nonconformity: Uses, Lots, Structures, Site Characteristics
- Use Nonconformity: *(Examples: single-family home surrounded by industrial uses and zoned industrial, billboards, lots that don't meet the minimum width and size requirement, and structures that don't meet the side setback requirement.)*
- Nonconforming Site Characteristic: *(Example: sidewalks, lighting, parking, landscaping. Bloomington has a 3-foot screening requirement between street and parking lot.)*
- Expansion: *(Size increase examples: an addition onto a nonconforming use, billboards, and relocation; large or small or moving from within the four walls of the building.)*
- Expansion Intensification: *(Example: Minnetonka. It's not allowed -- examples of intensification were provided.)*
- Processes in Place to Allow Expansion of Uses, Structures, Lots & Site Characteristics
- Staff Recommendation: Use Expansion. *(Utilize a discretionary approval process (CUP) to allow nonconforming uses to expand in size, intensity or through relocation on a site. Council could examine the merits of the request subject to standards and findings. Apply it use by use, district by district, wherever Council deems appropriate.)*
- Potential Findings
- Potential Standards: *(Planning Commission recommended limiting the size of the expansion and limiting the percentage increase of the expansion.)*
- Discussion Item – Deferred Rezoning: *(A landowner representative's suggested deferring rezoning unless it's triggered by implementation of the Orange Line or funding of it, for example. Staff's concern is in the interim period, there could be redevelopment that is inconsistent with the vision with a 20-30-40 year life span.)*
- Discussion Item: Making Auto Dealerships Allowed Uses Subject to Intensity Standards. *(Current Code allows fully enclosed auto dealerships in the C-3 and C-5 zones but with no exterior storage and no surface uses. An idea would be to allow exterior storage and surface uses as long as the Intensity Standards are being met. A minimum Floor Area Ratio of 1.0 in C-5, which would be challenging for dealerships to meet.)*

Council comments/inquiries:

Winstead asked if there is a fully enclosed dealership in Bloomington, as they by nature provide service.

**STUDY ITEM #1
continued**

Markegard replied no but said there is a fully enclosed snowmobile/motorcycle dealership. He said the Floor Area Ratio (FAR) at the BMW dealership is over 0.62.

Winstead commented the “fully enclosed” definition is not practical; as no dealership will be able to make that work. They utilize outdoor space and they need to provide service.

Markegard said upon receiving Council’s initial feedback on the options, staff will codify this and bring it back for a public hearing at the Planning Commission and then City Council. Again, it would be to allow, through a Conditional Use Permit (CUP), expansion opportunities subject to Findings and Standards. In other words, a discretionary exception process would be created.

Winstead questioned the potential findings for nonconforming uses. He questioned how the finding could be made if it’s a nonconforming use in the zoning district. He said he never sees this finding being met because the dealership could not expand.

Markegard said the purpose and intent section of the zoning districts often talk about general items. In some cases, there are specific items about prohibiting certain uses. In order to do that, staff would have to tweak those Purpose and Intent section in at least one scenario in the C-5 District. Generally, they’re more open to interpretation. He said the district would specifically allow expansion subject to this process. He said an alternative would be to not have a finding at all.

Mark Bernhardson, City Manager said a variation could be that at a certain size, with a little expansion it’s acceptable. He said the City wants owners to keep up their properties and could allow some minor expansion in size and use, but it doesn’t want to see a significant investment that goes away from the Council’s vision of the plan. It’s saying that the use may be conforming at this size with a little expansion room, but it’s how to put that into words if that is Council’s intent. It’s an allowed use up to this point but no further.

Carlson asked if staff envisioned any of the property owners needing to meet multiple findings for multiple applications.

Bernhardson reminded Council has the greatest discretion with the Comprehensive Plan, less with rezoning, less with CUPs, and less with Final Site and Building Plans. He said there is less discretion further down the chain. He said how it’s classified and where it gets fitted in makes a difference how much discretion the Council will have.

Markegard said the one use staff has heard concerns from the Planning Commission and the Council is auto dealerships. He said if Council desired, they one would be allowed to go through the exception process.

Bernhardson said staff will work to fashion the concept of allowing dealerships to be a conforming use at their current size or with a little expansion with a CUP, but going beyond that would not be allowed.

Baloga said it doesn’t seem right that a dealership would not be allowed to install or rededicate a portion of its current service area to a wash area because it’s considered an intensification of the use. He said it seems a little overbearing on the City’s part to ask a property owner, who is in the service business, to get a CUP in order to continue the ability to service vehicles. He said that would be a disservice to Bloomington’s business owners; not to be able to stay competitive.

Bernhardson inquired if that example was based on current nonconformity language or what staff is proposing for nonconformity language and/or an interpretation of either of those.

Markegard said it’s up to interpretation. If there are two nonconforming uses within one building, the question is can one use be moved into the other use or could one use grow and one shrink. He said imagine a strip center. Could one nonconforming use be allowed to grow as long as another one is shrinking?

**STUDY ITEM #1
continued**

Winstead said even if a dealership isn't expanding their footprint, a car wash is a more intense use than is the service area. He gave another example – what if a dealership wants to convert part of the service area to more sales show floor. Another example was what if the dealer wants to move the used cars into an indoor showroom. They trade the outdoor lot for an enclosed building. The building footprint increased but does that constitute as an intensification of the use.

Markegard said the intent is to develop a process that could approve that type of expansion.

Carlson said auto dealerships aside, he asked if the findings would apply to the potential expansion of a strip development into the Orange Line.

Markegard said this would be use by use and district by district. There are two nonconforming uses in the Penn American District; auto dealerships and motor vehicle repair. He asked if Council wanted them treated identically or not.

Carlson said with a proposed, separate retail development on the right-of-way that would disrupt where the proposed Orange Line would be, even though there is no auto related uses proposed for that development, it would still require the same process in meeting the same nonconforming standards as in these cases.

Markegard said because those nonconforming uses are not in place, there would be no expansion process.

Busse commented all of the potential findings language is a matter of interpretation.

Markegard said the standards are typically measurable; more black and white. He asked if the Council sees a need to cap the level of expansion.

Busse replied yes there needs to be a cap on the size or the percentage.

Carlson said he would be less likely to consider a possible variance if that would further increase the nonconformity. He would look at that land use application as a red flag towards what they were proposing.

Oleson asked if comparing Bloomington to other communities that have gone in the direction the Council is considering, would open up the City to criticism or worse in terms of not being able to clearly show how there is some consistency from case to case. He said if the Council does this, it needs to tighten it up and asked if this would be setting a precedent even though it's on a case by case basis.

Markegard said once the process is in place, it has to be consistent in how it's applied.

(This issue to come back as a public hearing item at a Regular Council meeting.)

**STUDY ITEM #2 –
Penn American East –
Small Area Study**

Julie Farnham, Senior Planner and Jason Schmidt, Planner presented the staff report on the Penn American East – Small Area Study (area bounded by 35W (west), Lyndale Avenue (east), I-494 (north), and West 82nd Street (south). During the final review of the Penn American District Plan (PADP), the Council requested staff assess the redevelopment potential of properties east of I-35W given the proposed implementation of the Orange Line Bus Rapid Transit (BRT) nearby. The presentation highlighted the following:

- Small Study Area: 35W, 494, Lyndale Avenue and 82nd Street
- Purpose
- Existing Conditions: Uses *(Mixture to the north of American Boulevard. Two existing auto dealerships in this area. 700 & 900 American Boulevard are vacant lots. Industrial uses south of American Boulevard. Established single-family neighborhood south of 80½ Street.)*
- Existing Conditions: Land Use Guide
- Existing Conditions: Zoning
- Existing Conditions: Nonconforming Uses. *(The I-3 zoning has been amended making those uses legally nonconforming uses.)*

**STUDY ITEM #2
continued**

- Existing Conditions: Age of Structure *(Majority of the buildings are 30-40 years old.)*
- Existing Conditions: Property Values
- Challenges: Barriers to Redevelopment. *(GN ReSound and REI have put money into their buildings.)*
- Key Challenges: *(There is no easy access to this area for nearby residents and there is a flooding issue on the west side. There are older buildings on the south side of West 80th Street. There are very few amenities in this area overall.)*
- Key Opportunities: *(Stable single-family neighborhood in which residents reinvest. Good housing stock. Proposed transit investments. Great freeway frontage and visibility. Relatively good access to freeways.)*
- Land Use Scenarios: Area 1 *(Question is should redevelopment be required at a higher intensity (C-3) or should the development intensity be left to market choices (C-1 or C-2))*
- Land Use Scenarios: Area 2: *(Office, industrial preservation, retail, multi-family residential, and mixed use.)*

Council comments/inquiries:

Winstead said there needs to be some thought given to the roadway system given the freeway access from 35W into this area.

Oleson stated given the flooding issues in this area, asked if there was an opportunity to install some kind of underground holding tank that would allow a more a park-like setting rather than putting development on it that will flood someday. He said that might make the residential situation more appealing.

Bernhardson explained there are ways to address it and staff has looked at a number of options in the past. He said the driver will be the 35W/494 interchange.

Oleson commented the City needs to be proactive with the permeability issues in the area.

Busse inquired how much further beyond the study area should be considered, i.e. Toro, Goodwill, etc. How will it all work together?

Farnham said staff looked at it initially in conjunction with the Penn American District Plan. She asked if there should be traffic or stormwater studies and what does Council see as the scope of this project.

Baloga inquired if Freeway Commercial was entertained for the area north of American Boulevard.

Farnham said the Land Use Guide calls it Regional Commercial, which allows retail, office, car dealerships, hotels, and restaurants. There are a range of uses that would work based on the Land Use Guide and the zoning.

- Land Use Scenarios: Area 3: *(Nice mixed use, multi-family residential, and hotel. Staff added Industrial Preservation to the mix as a possibility.)*

Winstead commented Industrial in this area is very small in nature. There is very “dirty Industrial” with small machine shops and some outdoor places along with GN ReSound, which is also Industrial. He said the Council needs to get its arms around the Industrial zoning.

Farnham said it’s a very open ended list.

Bernhardson commented when this area developed, American Boulevard was a dead-end street; now it’s a main thoroughfare. He said GN ReSound is Industrial but it’s more like the IT District that is developing in South Loop. He said the uses that could develop along American Boulevard should not be as high intensity as that along 494, but there could still be some fair densities and this provides those opportunities.

Farnham confirmed the Council is saying Industrial might be okay but the type of Industrial needs to be fine-tuned.

**STUDY ITEM #2
continued**

Abrams said when she thinks about residential turnover and the fact that this is a unique area and as close to an urban housing stock neighborhood that Bloomington has this far west and yet adjacent to American Boulevard, she asked who the City wants those houses to go to when the seniors pass away and kids sell their houses. She said the City wants them to be sold to 28-year olds with enough money for a sizable down payment and a desire to live there for a long time. She said the City wants to give them the hope that it's not just a little machine tool shop located nearby but that the City is giving thoughts to some of the neighborhood amenities that will be needed. She said the City needs to keep in mind those young home buyers are not going to wait around for the City to develop those amenities.

Farnham said this is the kind of neighborhood the City wants to preserve and suggested there might be some edge treatment that could be developed along the I-35W edge.

Winstead commented people will have to live with road system but a pedestrian/bikeway could be developed to transition into a park-like setting. He said that neighborhood isn't going anywhere. As it's not going to be converted away from residential so the City needs to make it appealing.

- Approach Options: How does the Council want to proceed from here -- The District Plan approach, the Small Area Plan approach, the Clean Up approach, or the No Study approach?

Carlson said the area is definitely worthy of a traffic study. He said with the potential for change, the Council should be proactive. He recommended Lyndale-American as a name for the study but wasn't sure if it should be a District Plan or a Small Area Plan.

Oleson liked the idea of a Small Area Plan. He disagrees with pushing the east side of 35W into the district plan on the other side.

Bernhardson suggested it might be a combination of the two. He said staff will define a Small Area Plan with some elements of the District Plan so that it could grow into a District Plan sometime in the future. They'll use a Small Area Plan approach and will incorporate some of the special studies (traffic, utilities, etc.) that could grow it into a district plan while being softer on the implementation side for the time being.

Winstead said the freeways dissect and bisect Bloomington resulting in a great divide of the city. He doesn't want to see 35W continue to be the great divide and suggested the land use needs to tie into the Penn American District Plan while evolving over time.

Oleson said this would be a good opportunity to develop something smaller than a district plan that could be used as a model in other areas of the city.

Lowman said he likes this idea and asked if it would make sense to see what transforms with the 494/35W and American Boulevard corridors. He said perhaps it makes sense to look further south and wait on implementing plans for this area.

Baloga commented on 90th Street & Penn Avenue and the surrounding area. He said the City could be criticized for not paying attention to some of the neighborhood issues and remarked there are a lot of vacancies in that shopping center. He said some of the tenants might not be what the City would choose for that location and while there has been discussion about this area, nothing has been launched. He said the more the City focuses on the larger opportunities, the less opportunity it will have to focus on some of the neighborhood issues. He would like to keep this neighborhood issue at the forefront. He believes the 90th & Penn Avenue area is the place where a plan should be done. While he agrees with what Mayor Winstead said, his priority is the area further to the south. He said everything the City has done to date has been in the bigger areas.

Abrams agreed the 90th & Penn area needs some attention at this time, but said the Council needs to continue its discussion on prioritizing these areas. She asked if the Penn American East Area, for example, is more blighted, atrophied, and more in need of time and attention than the 90th & Penn Avenue. She said these discussions must continue.

**STUDY ITEM #2
continued**

Winstead commented the Council needs to talk about what can be done.

Bernhardson said when the France Avenue & Old Shakopee Road Study was done, the market indicated Bloomington was over retail; it was pre “big box.” He said Bloomington has a disadvantage with the river. Bloomington’s market stops at the river; there is no flow across, like Valley West, etc. The struggle is should the City look at 90th & Penn? Should that area continue as a commercial area, like it does today, or are there more opportunities for multiple residential with a little mixture? He said if the City is going to do neighborhood studies, some areas are going to transform.

Winstead commented France & Old Shakopee was done in quadrants, getting input from those adjacent, without taking into account the larger vision for the intersection. He said four separate visions resulted. He said the largest landowner there has been reticent to take on a long or big vision.

Bernhardson said if Council wants to pull back on the Penn American East Area, to let him know.

Baloga said when it appeared the BRT transit station was more than likely to go into the center island position on 35W, studying the east side of 35W seemed most appropriate. Now that the station will be located to the west, his priority is changing.

Winstead said the City needs to get these ideas out there globally.

Busse cautioned not to back off of this area completely, as there is a need to do it now or in the future. He said the BRT on American Boulevard will happen soon so at the very least, a Small Area Plan should be completed for this area.

Carlson agreed with Busse and said this area is ripe for redevelopment. He said there has been a lot of infrastructure investment in this area so the Council needs to look at it now before developers come in with proposals.

Winstead said the Council needs to identify the traffic, roads, and infrastructure from 35W to the area and it needs to preserve the residential and how it works with the commercial and industrial areas.

**STUDY ITEM #3 –
City Code
Amendment – Rental
Housing Ordinance**

This item was postponed to the next study meeting due to a lack of time this evening.

Additional Comment

Bernhardson stated late last Friday, staff learned about three bills relating to the Metropolitan Airports Commission (MAC). He said there is a joint hearing tomorrow night so the City wants to get a letter to Bloomington’s legislative representative (Senator Franzen). He read from the letter drafted by staff regarding three elements: MAC’s desire to disband the Noise Oversight Committee (NOC), MAC’s desire to go back to square one with regard to the Airport Development Plan, and MAC’s desire to have joint airport planning at the Minnesota Department of Transportation (MnDOT), MSP, Rochester and at St. Cloud. He asked Council to review the draft language so it can act upon its submittal to MAC during Item 6.1 at the Regular Council meeting tonight.

Winstead concurred the City needs to get its viewpoint out there.

Adjourn Meeting

Mayor Winstead adjourned the special meeting at 6:52 p.m.

Barbara Clawson
Council Secretary